

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Millennium Digital Media Systems, LLC	)	
	)	CSR 6037-E
Petition for Determination of Effective	)	
Competition in Various Michigan Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 27, 2007**

**Released: March 1, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**INTRODUCTION**

1. Millennium Digital Media Systems, LLC ("Millennium") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and Sections 76.7(a)(1) and 76.905(b)(1) of the Commission's rules for a determination of effective competition in various communities in Michigan (the "Communities").<sup>1</sup> Millennium alleges that its cable systems serving the Communities are subject to effective competition and therefore exempt from cable rate regulation. Millennium alleges that its cable systems serving thirty-five Communities are subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). Millennium also claims the presence of effective competition in forty-two communities because fewer than thirty percent of the households subscribe to the cable services of its cable system. No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>3</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>4</sup> Based on the record presented in this proceeding, Millennium has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video

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<sup>1</sup>See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(1). Concord Village (MI0477) is certified to regulate basic cable rates. Millennium filed for seventy-eight communities, thirty-five under the competing provider test and forty-three under the low penetration test. Millennium no longer has a franchise in the community of North Plains, therefore, the petition for this community is dismissed.

<sup>2</sup>47 C.F.R. § 76.906.

<sup>3</sup>47 C.F.R. § 76.905.

<sup>4</sup>See 47 C.F.R. §§ 76.906 & 907.

programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15 percent) of the households in the franchise area.<sup>5</sup> In addition, Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”<sup>6</sup>

### The Competing Provider Test

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>7</sup> Millennium has provided evidence of the advertising of DBS service in the news media serving the communities.<sup>8</sup> The two DBS providers’ subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.<sup>9</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the communities are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>10</sup> We find further that Millennium has demonstrated that the community is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Millennium sought to determine the competing provider penetration in thirty-five of its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.<sup>11</sup> Millennium asserts that it is the largest MVPD in thirty of the Communities because Millennium’s subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>12</sup> Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,<sup>13</sup> we find that Millennium has demonstrated that the number of households subscribing to programming services offered

<sup>5</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> 47 U.S.C. § 543(l)(1)(A).

<sup>7</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>8</sup> *See* Millennium Petition at 5-6 and Exhibit C.

<sup>9</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

<sup>10</sup> *See* 47 C.F.R. § 76.905(g). *See also* Petition at 5-6 and Exhibits E and F.

<sup>11</sup> *Id.* at 6-7 and Exhibits A and D (SkyTrends Report).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* and Exhibit A.

by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in these thirty Communities. Therefore, the second prong of the competing provider test is satisfied as to these thirty Communities. Based on the foregoing, we conclude that Millennium has submitted sufficient evidence demonstrating that its cable systems serving thirty of the Communities set forth on Attachment A are subject to effective competition.

6. As to five other communities, Boston Township, Handy Township, Henrietta Township, Marengo Township, and Perry Township, Millennium is unable to determine the largest MVPD because the number of DBS subscribers for DirecTV and DISH Network provided by SkyTrends are aggregated and exceed the number of Millennium subscribers. Nevertheless, we are able to conclude that the second prong is met by analyzing the data submitted for both Millennium and the DBS providers. If the subscriber penetration for both Millennium and the aggregate DBS providers each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied. In Boston Township, assuming Millennium is the largest MVPD, the combined DBS penetration rate is 36.48 percent.<sup>14</sup> Conversely, assuming that one of the DBS providers is the largest MVPD in Boston Township, the subscribership of Millennium is 32.29 percent.<sup>15</sup> In Handy Township, assuming that Millennium is the largest MVPD, the combined DBS penetration rate is 23.48 percent.<sup>16</sup> Conversely, assuming that one of the DBS providers is the largest MVPD in Handy Township, Millennium's penetration rate is 22.36%.<sup>17</sup> In Henrietta Township, assuming that Millennium is the largest MVPD, the combined DBS penetration rate is 40.33 percent.<sup>18</sup> Conversely, assuming that one of the DBS providers is the largest MVPD in Henrietta Township, Millennium's penetration rate is 34.26 percent.<sup>19</sup> In Marengo Township, assuming Millennium is the largest MVPD, the combined DBS penetration rate is 35.75 percent.<sup>20</sup> Conversely, assuming that one of the DBS providers is the largest MVPD in Marengo Township, Millennium's penetration rate is 34.22%.<sup>21</sup> In Perry Township, assuming Millennium is the largest MVPD, the combined DBS penetration rate is 40.49 percent.<sup>22</sup> Conversely, assuming that one of the DBS providers is the largest MVPD in Perry Township, Millennium's penetration rate is 36.02%.<sup>23</sup> Accordingly, we find that Millennium has demonstrated that the number of households subscribing to programming services offered by MVPDs other than the largest MVPD, exceeds 15 percent of the households in its Boston Township, Handy Township, Henrietta Township, Marengo Township, and Perry Township franchise areas.

### **The Low Penetration Test**

7. Millennium submits sufficient evidence regarding household and subscriber data, demonstrating that its cable system serves less than 30 percent of households in forty-two of the

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<sup>14</sup>*Id.* and Exhibits A and D (479 combined DBS subscribers ÷ 1313 Boston Township households = 36.48%).

<sup>15</sup>*Id.* (424 Millennium subscribers ÷ 1313 Boston Township households = 32.29%).

<sup>16</sup>*Id.* (588 combined DBS subscribers ÷ 2504 Handy Township households = 23.48%).

<sup>17</sup>*Id.* (560 Millennium subscribers ÷ 2504 Handy Township households = 22.36%).

<sup>18</sup>*Id.* (651 DBS subscribers ÷ 1614 Henrietta Township households = 40.33%).

<sup>19</sup>*Id.* (553 Millennium subscribers ÷ 1614 Handy Township households = 34.26%).

<sup>20</sup>*Id.* and Exhibits A and D (281 combined DBS ÷ 786 Marengo households = 35.75%).

<sup>21</sup>*Id.* (269 Millennium households ÷ 786 Marengo households = 34.22%).

<sup>22</sup>*Id.* and Exhibits A and D (507 combined DBS subscribers ÷ 1252 Perry Township households = 40.49%).

<sup>23</sup>*Id.* (451 Millennium subscribers ÷ 1252 households = 36.02%).

Communities.<sup>24</sup> Millennium provided 2000 Census Bureau household data for the communities in its franchise area.<sup>25</sup> Millennium also provides the count of Millennium subscribers in the franchise area, which it used to calculate a subscriber-to-household penetration rate.<sup>26</sup> Based upon the subscriber penetration levels as reflected in Attachment B, calculated using 2000 Census household data,<sup>27</sup> we find that Millennium has demonstrated that the number of households subscribing to its service is less than 30 percent of the households in the forty-two Communities. Based on this record, we conclude that Millennium has demonstrated that its cable system meets the requirements of low penetration effective competition under our rules, and we grant its petition.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Millennium Digital Media Systems, LLC listed on Attachments A and B **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that the low penetration claim for the community of North Plains **IS DISMISSED** without prejudice.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Millennium Digital Media Systems, LLC **ARE REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>28</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division, Media Bureau

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<sup>24</sup>*Id.* at 8.

<sup>25</sup>*Id.* and Exhibit B.

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>47 C.F.R. § 0.283.

## Attachment A

## CSR-6037-E

Communities	CUIDS	CPR*	2000 Census Households <sup>+</sup>	Estimated DBS Subscribers <sup>+</sup>	Millennium Subscribers <sup>+</sup>
Alaeidon	MI1832	23.4	1115	261	440
Athens	MI0930	21.9	397	87	239
Aurelius Township	MI1716	39.2	1130	443	504
Bath Charter	MI1060	21.9	2799	613	1846
Bellevue	MI1064	15.2	525	80	335
Benton Township	MI0653	33.4	991	331	446
Concord Village	MI0477	20.4	318	65	47
Eaton Township	MI0652	29.4	1531	451	780
Fowlerville Village	MI0493	15.13	1156	175	736
Grass Lake Village	MI1088	21.6	421	91	376
Hastings City	MI0151	21.4	2759	592	1455
Homer Village	MI1082	24.6	707	174	356
Hubbardston Village	MI1549	20.0	130	26	51
Leslie City	MI0454	20.1	734	148	485
Marshall Township	MI1690	20.7	1081	224	312
Morrice Village	MI1294	16.7	316	53	177
Mulliken Village	MI1157	16.4	195	32	120
Oneida Charter	MI1719	24.7	1352	335	373
Pewamo Village	MI1375	15.7	197	31	109
Portland City	MI0610	16.0	1507	242	1176
Pottersville City	MI0651	20.4	802	164	563
Union City Village	MI0837	21.9	685	150	450
Vermontville Village	MI1301	26.8	287	77	84
Vevay Township	MI0614	35.0	1264	443	493
Victor Township	MI1061	25.5	1139	291	346
Watertown Charter	MI1314	28.4	1469	418	650
Williamstown Township	MI0611	22.4	1692	379	1086
Windsor Charter	MI0706	15.06	2781	419	1256
Woodhull Township	MI1292	25.1	1390	350	872
Boston Township	MI1250	25.4	1881	479	424
Handy Township	MI0612	23.4	2504	588	560

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Henrietta Township	MI1087	40.3	1614	651	553
Marengo Township	MI1691	35.7	786	281	269
Perry Township	MI0745	32.3	1252	507	451
Sunfield Village	MI1156		222	6	161

\*CPR = Percent of competitive DBS penetration rate.

+See Petition at 6-7 and Exhibits A and D.

## Attachment B

Communities	CUIDS	CPR*	2000 Census Households <sup>+</sup>	Millennium Subscribers <sup>+</sup>
Albion Township	MI1711	5.58	466	26
Athens Township	MI1519	0.07	956	70
Bellevue Township	MI1065	0.07	1161	82
Bunkerhill Township	MI1068	2.03	690	14
Burlington Township	MI1602	0.01	734	30
Campbell Township	MI1249	0.04	780	34
Carmel Township	MI1774	19.83	923	183
Concord Township	MI0478	0.06	986	65
Convis Township	MI1296	5.47	622	34
Danby Township	MI1297	19.75	914	178
Eagle Township	MI1315	16.39	848	139
Eaton Rapids Township	MI1717	13.86	1328	184
Eckford Township	MI1756	15.13	476	72
Fredonia Township	MI1708	11.78	679	80
Grass Lake Township	MI1089	13.49	1653	223
Green Oak Township	MI0905	19.97	5438	1086
Hanover Township	MI1077	22.99	1374	316
Hastings Charter	MI1858	9.36	1015	95
Homer Township	MI1083	0.02	1117	23
Ingham Township	MI1604	18.55	722	134
Leroy Township	MI0613	0.11	1329	148
Leslie Township	MI1076	0.04	855	35
Liberty Township	MI1298	14.63	1073	157
Lyons Township	MI1548	0.01	1268	25
Odessa Township	MI1090	0.06	1492	100
Onondaga Township	MI1718	5.14	993	51
Parma Township	MI1081	20.25	943	191
Portand Township	MI1058	25.97	828	215
Pulaski Township	MI0479	15.57	700	109
Roxand Towship	MI1158	0.09	658	63
Sandstone Charter Town	MI1079	0.00	1321	13
Sciota Township	MI1063	22.72	625	142

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Sheridan Township	MI1737	27.14	770	209
Sherwood Township	MI0931	17.74	885	157
Spring Arbor Township	MI1078	1.05	2570	27
Stockbridge Township	MI1085	0.20	1220	25
Sunfield Township	MI1159	0.08	777	63
Union Township	MI0932	0.08	1184	99
Walton Township	MI1067	18.60	699	130
Westphalia Township	MI1295	4.82	436	21
Wheatfield Township	MI1293	12.98	570	74
Woodland Township	MI1091	14.60	808	118

\*CPR = Percent of Millennium penetration rate.

+See Petition at 8 and Exhibit B.